APPENDIX

CHRONOLOGICAL HISTORY OF THIS LITIGATION

January 28, 1930—

Hartford Fire Insurance Company issued to P. J. Leithauser, deceased, the insurance policy in question, the same being a policy of fire insurance for a period of one year upon a certain elevator and other property not relevant here, located in Sherwood, Defiance County, Ohio. This policy was a second renewal of a policy issued in January of 1928, and renewed in January, 1929. At the dates on which these policies were issued, and at the time of the fire the decedent, P. J. Leithauser, was a member of the partnership firm of Leithauser & Parent, engaged in the business of writing fire insurance, and said firm at all of said times was the duly licensed agent of the defendant, Hartford Fire Insurance Company, for the purpose of writing fire insurance. The policy in question, and its predecessors, were issued to Leithauser by the partnership of Leithauser & Parent as the general agent of the defendant insurance company.

July 20, 1930—

The insured elevator, with the exception of the office building, burned to the ground.

March 4, 1931—

P. J. Leithauser, as plaintiff, filed his petition in the Court of Common Pleas of Defiance County, Ohio, seeking at law a judgment on said policy for the sum of $10,000. This cause was duly removed to the United States District Court for the Northern District of Ohio, Western Division, and was docketed as Cause No. 3737 at Law. In this action defendant pleaded, among other defenses, that the property stood upon leased ground and that there was existing at the time of the fire an undisclosed chattel mort-

gage on the insured property, contrary to policy conditions.

June 28, 1933—

The cause came on for trial before a jury with Judge John M. Killits presiding. At the conclusion of the evidence the court, without passing upon the chattel mortgage defense, sustained a motion of the defendant for a directed verdict in its favor, on the ground that the property destroyed stood upon leased ground, in violation of a condition of the policy.

June 29, 1935—

United States Circuit Court of Appeals for the Sixth Circuit, upon an appeal from the judgment of the District Court, affirmed that judgment in all respects (78 F. 2d 320).

October 8, 1935—

Circuit Court of Appeals for the Sixth Circuit denied a motion filed by Leithauser to recall the mandate and for leave to file an amended petition, seeking reformation of the policy.

November 25, 1935—

Supreme Court of the United States denied a petition for a writ of *certiorari* filed by Leithauser from the judgment of affirmance of the Circuit Court of Appeals, and from its refusal to recall its mandate (296 U. S. 645).

March 30, 1936—

The present action, a suit in equity to reform the policy by inserting therein language to the effect that the property in question was on land leased by the insured from the Baltimore & Ohio Railroad Company, filed in the Common Pleas Court of Defiance County, Ohio. The petition sought reformation and judgment upon the reformed contract in the sum of $10,000. This cause was duly removed to the United States District Court for the North-

ern District of Ohio, Western Division, and docketed as No. 1554 in Equity.

May 8, 1936—

Judge Paul Jones overruled a motion of Leithauser filed in the District Court on January 31, 1936, in Cause No. 3737 for leave to file an amended petition, setting up a claim for reformation of the policy.

June 8, 1937—

Case ordered revived upon motion of Martin Leithauser, as Administrator of the Estate of P. J. Leithauser, who died on March 22, 1937.

August 28, 1939—

This cause having been tried before Judge Frank L. Kloeb, the court, confining himself solely to the issue of reformation, handed down a written opinion finding on the issue of reformation in favor of the defendant and dismissing the plaintiff's petition (29 F. Supp. 401).

October 10, 1939—

Judge Kloeb entered judgment in favor of the defendant, denying reformation and dismissing the petition.

October 7, 1941—

United States Circuit Court of Appeals for the Sixth Circuit, upon appeal prosecuted by Leithauser, reversed the judgment entered by the District Court, and in the original opinion remanded, with directions to decree reformation and "to render judgment upon the policy as reformed."

November 1, 1941—

Petition for rehearing filed by defendant insisting, among other things, that the defendant had not had its day in court on the chattel mortgage defense, and that the direction of the Circuit Court of Appeals to the District

Court to enter judgment upon the policy, as reformed, was in violation of the company's constitutional rights.

January 12, 1942—

Petition for rehearing denied but the court modified its opinion by striking therefrom the language "and to render judgment upon the policy as reformed," and by substituting therefor the language "and for such other proceedings as are consistent herewith" (124 F. 2d 117).

April 6, 1942—

Petition for writ of *certiorari* filed in the Supreme Court by Hartford Fire Insurance Company denied (316 U. S. 663).

November 9, 1942—

Motion filed by plaintiff for entry of judgment in his favor overruled; also motion of defendant for leave to file an amended answer, eliminating all allegations concerning reformation, overruled.

November 27, 1942—

Order entered by Judge Freed, decreeing reformation in accordance with the decision of the Circuit Court of Appeals and ordering the case assigned for trial.

May 18, 1943—

Trial of the case began before Judge Freed and a jury.

May 26, 1943—

The jury returned a verdict in favor of the defendant, Hartford Fire Insurance Company. On the same day the court entered jdugment upon the verdict in favor of the defendant.

February 24, 1944—

The court overruled motions filed by plaintiff Leithauser for a new trial and for judgment notwithstanding the verdict of the jury.

May 22, 1944—

Notice of appeal filed by Leithauser to the United States Circuit Court of Appeals, for the Sixth District.

April 30, 1945—

United States Circuit Court for the Sixth Circuit affirmed the judgment in favor of this respondent (149 F. 2d 152).

July 27, 1945—

Petition for writ of *certiorari* filed in the Supreme Court of the United States by Leithauser on judgment of affirmance entered by the Circuit Court of Appeals for the Sixth Circuit.